EUGENE V. SIMONS

IBLA 76-346 Decided August 16, 1976

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting competitive sodium lease application, W-26267.

Affirmed.

1. Mineral Leasing Act: Environment -- National Environmental Policy Act of 1969: Environmental Statements-Sodium Leases and Permits: Generally -- Sodium Leases and Permits: Leases

   In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

APPEARANCES: David D. Dominick, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Eugene V. Simons has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated October 17, 1975, rejecting his competitive sodium lease application, W-26267.

On October 21, 1970, appellant filed an application, designated W-26267, for a sodium lease on sections 22 and 26, T. 16 N., R. 108 W., 6th P.M., Sweetwater County, Wyoming, pursuant to 30 U.S.C. §§ 261, 262 (1970). Appellant was seeking to lease the lands because of their value for a sodium-bearing compound, trona. 1/

By decision dated October 29, 1971, BLM rejected the application on the basis of a Forest Service recommendation that the application be rejected because such lands were within the boundaries of the Flaming Gorge National Recreation Area. However, on November 3, 1971, that decision was vacated when BLM learned that only part of the lands described in the application were within the Flaming Gorge National Recreation Area.

Subsequently, appellant filed an amendment to W-26267 on July 16, 1973. He deleted the lands within the Flaming Gorge National Recreation Area and added other lands. His amended application was for a total of approximately 2,380 acres.

On January 16, 1975, BLM received a memorandum from the Director, Geological Survey, recommending that the lands described in W-26267, as amended, be offered for competitive leasing.

Thereafter, BLM solicited comments from various federal and state agencies, local governmental bodies, private companies, and groups and organizations concerning the lease application. BLM proposed the following alternatives concerning the application:

> 1. Lease the acreage applied for, but allow no surface occupancy of any kind for either exploration or development purpose. Rights granted under such a lease would allow mining of trona by driving the mine in from adjacent non-federal sections, but no surface use could be made of Federal lands.
>
> Practically speaking, this type of lease would never be required since the deposit could not be evaluated without using extremely expensive directional drilling techniques from adjacent non-federal lands. This situation would also give the adjacent land owner the right of denial of access for the federal lessee.

1/ Trona is defined in A Dictionary of Mining, Mineral, and Related Terms, edited by Paul Thrush 1968, p. 1168 as:

"A natural sodium sesquicarbonate, Na[2]CO[3].NaHCO[3].2H[2]O, and the most important of the natural sodas. * * * Extensive deposits are found in Wyoming, * * *."

2. Lease the acreage applied for, but allow no surface occupancy of the lease for any mining or refining purpose. This would only allow exploratory use of the lease surface. Rights granted under such a lease would allow for evaluation of the ore body. Mining and processing of trona would have to be accomplished by locating the mine and plant on adjacent non-federal sections.

3. Lease the acreage applied for, but allow no processing plant construction on the lease. This would allow the lease holder to explore the property, establish a mine with its related surface structures and then require transportation of the ore away from the area for processing, by either rail, trucking or a slurry line.

4. Reject the lease application.

After receiving comments from some of the parties that were contacted, BLM informed appellant by decision dated October 17, 1975, that the application was being rejected because:

> Negative impacts from mining of the lands applied for would be experienced on air, soil and water quality, as well as on vegetation, wildlife and recreational and aesthetic values. Due to the close proximity of the lands to the Flaming Gorge Reservoir and National Recreational Area, the threat of water pollution and the damage to recreational and aesthetic values are particularly of concern. The threat to air quality of any trona plant associated with the prospective mining operation relates to these concerns, but goes beyond them in its impact.
>
> Those lands that you seek to lease for trona mining and the surrounding environment would be more severely damaged by such activity than most other sites within the known sodium leasing area.
>
> The Sweetwater County Commissioners, the County Planning & Zoning Commission, and the Town of Green River all have submitted letters opposing the offering of a competitive sodium lease for these lands. The thrust of their objection is that sodium mining on these lands would not be compatible with surrounding land uses. We agree.

On appeal appellant argues that:

1. The subject lands are included in an area that has been designated for trona mining. The boundaries of the Flaming Gorge Recreation area were legally established with the stated objective of allowing adjacent tracts to be developed for trona mining.

2. BLM stated that trona development on the subject lands would pollute the air, water and aesthetic values of the recreation area. As no specific development plan has been submitted, it would not be possible for BLM to make this judgment. It is beyond the authority of BLM to rule on the compliance of an unspecified operation with other governmental regulatory agencies at this point.

3. Within the known sodium leasing area lands are presently under state and federal leases and they have the same proximity to the recreation area as the lands in question. By arbitrarily limiting trona development by some unknown boundary to the north, BLM is withdrawing an important natural resource and promoting a monopoly by existing producers.

4. It is unlikely that it would be possible to take an unbiased poll of the opinion of the population of Rock Springs and Green River with regard to favoring an additional trona operation. A large percentage of the population is employed by the presently operating companies. It would be quite difficult to distinguish environmental concern from company influenced competitive concern.

[1] The Secretary of the Interior has discretionary authority to lease lands known to contain valuable deposits of sodium through advertisement, competitive bidding and such other methods as he may adopt by general regulation. 30 U.S.C. §§ 261, 262 (1970). Further, he is vested with plenary authority over administration of the public lands, including institution of measures designed to protect these lands and their resources. 43 U.S.C. § 1457 (1970); John Oakason, 3 IBLA 148, 149 (1971). And he is obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969. 42 U.S.C. § 4331 (1970); Allan R. Hallock, 13 IBLA 13 (1973).

Therefore, the Secretary is charged with examining a multitude of extrinsic factors prior to the issuance of a mineral lease. Herein, BLM attempted to gather information concerning the public opinion and environmental impact of the leasing of the land in question. In a memorandum from the District Manager, Rock Springs, to the Wyoming State Director, dated October 1, 1975, in which the District Manager recommended rejection of the lease application the following list appeared:

Agency	Comment
Federal	
Ashley National Forest	Unfavorable
Environmental Protection Agency	No Comment Received
State	
Wyoming Game and Fish Dept.	No Comment Received
Wyoming Dept. of Environmental Quality	No objection
Wyoming Recreation Commission	No objection
Local	
Mayor, City of Rock Springs, Wyoming	No Comment Received
Mayor, Town of Green River, Wyoming	Unfavorable
Sweetwater County Commissioners	Unfavorable
Sweetwater County Zoning and Planning Comm.	Unfavorable
Sweetwater County Environmental Ed. Council	No Comment Received
Private Companies, Groups & Organizations	
Upland Industries Corp.	No objection
Rock Springs Grazing Association	Favorable
Pacific Power & Light Company	No Comment Received
Sierra Club Representative	No Comment Received
Local Defenders of Wildlife Representative	Unfavorable

While the list indicates an unfavorable response from the Forest Service (Ashley National Forest), the Forest Service's actual response stated:

> A comprehensive environmental analysis report was prepared for the Blacks Fork sodium leases in 1973, due to our concern over the impacts trona mining and processing would have on the National Recreation Area. One of the major management recommendations from this report was that an environmental impact statement should be prepared before any mineral leases were issued where the accompanying mining activities could affect the values of the Flaming Gorge National Recreation Area. We feel this recommendation pertains to lands adjoining the National Recreation Area as much as lands within the NRA.
>
> As you are also well aware, a cooperative study was commenced in 1973 on the effects of trona fallout on the environment. With the cooperative trona study well under way, would it be feasible to defer advertising additional

> lands for sodium leases until the final results of the study have been assembled and properly evaluated" We also wonder if it is economically feasible to lease and mine new trona areas in light of the known present reserves and plant capacities. Also, has the proposal been reviewed in connection with OMB's circular A-107 pertaining to economics and competitive impacts?
>
> Of the four alternatives presented in your letter of August 21, 1975, we prefer alternative No. 2 with the additional provision that processing and refining activities be located near existing plants or utilize existing plants. We certainly would not want to see a trona plant located on non-Federal holdings such as State lands or UPRR land located in the vicinity.

Also, one day after the date of the above memorandum, the Sierra Club representative responded indicating that if the application were not rejected, he felt an environmental impact statement should be prepared.

While appellant has asserted that one of the stated objectives of the creation of the Flaming Gorge National Recreation Area was to allow adjacent tracts to be developed for trona mining, we can find no support for such a contention in the record or in the Act creating the National Recreation Area, Public Law 90-540, 82 Stat. 904. In addition, appellant argues that BLM could not, at this point, make a judgment as to the compliance of an unspecified operation with governmental regulatory agencies. However, this argument ignores the Secretary's responsibilities prior to the issuance of a lease. BLM, as the delegate of the Secretary, must investigate the ramifications of exposing public lands to competitive bidding for known mineral deposits. In anticipation of leasing BLM must consider the effects of development of the land and determine whether the benefits of leasing outweigh the burdens to the environment. We cannot accept appellant's argument that such judgments are not within BLM's purview.

Appellant also contends that there are other federal leases within the known sodium leasing area and that such leases have the same proximity to the NRA as the lands in question. While it is true that there are other federal leases within the known sodium leasing area, it is apparent from the record that development of the land sought by appellant could substantially contribute to the deterioration of the environment in the area of the Flaming Gorge National Recreation Area. The draft Environmental Analysis Report for this sodium lease application indicates, at p. 60, that introduction of a soda ash mining and manufacturing plant within the proposed lease area would "impose the same

problems, conflicts and stress factors presently associated with existing developments."

Without more evidence it is impossible to accept appellant's argument that because there are other federal leases in the area, his application should be granted. Such an argument fails to take into consideration the cumulative effects on the environment of a number of mining concerns in one area. While one mining and manufacturing operation in an area might not cause substantial environmental degradation, the proliferation of a number of such operations in a limited area could result in significant air and water quality deterioration. Appellant has not shown error in the decision's conclusion that these particular lands and the surrounding environment would be more severely damaged than most other sites within the known sodium leasing area.

There is a further and more compelling reason to reject this application, the need for the preparation of an environmental impact statement (EIS) covering the entire known sodium leasing area before any more leasing takes place. Such a conclusion is the thrust of the Forest Service's response to BLM's questioning concerning the present application. In addition, BLM also favors the preparation of such a statement. In the October 1, 1975, memorandum from the District Manager, Rock Springs, to the Wyoming State Director, cited supra, it was stated that:

> Based on the limited, but significant adverse response to the proposed action and the potential for causing irreparable damage to the environment, as identified in the EAR, it is recommended that an EIS be prepared before issuing any future competitive lease, for the reasons stated below.

Appellant has failed to establish that the decision to reject his sodium lease application was wrong. The results of further studies and the preparation of an EIS for the entire known leasing area may shed more light on the problems of leasing and the solution to such problems. The areas most suitable for leasing may be enumerated. We trust BLM will proceed to make such a determination. It is particularly appropriate to reject appellant's application at this time because the application affords him no preference for a lease by virtue of priority of filing. If the land is ever offered for competitive leasing, he would have the same right as others to bid for the lease, just as he would now if the lands were offered for leasing. This contrasts with situations, such as noncompetitive oil and gas lease applications, where an applicant would have a preference right due to his priority of filing the application. This is not to suggest, however, that it would be necessarily inappropriate to reject a preference right application pending resolution of the determination to lease in

a particular area.

Appellant is free to submit information to BLM which may help it to make an informed judgment concerning future leasing in the area and BLM should notify appellant should the decision be made to offer any of the lands within the known sodium leasing for competitive bidding.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed with this additional reason as a basis for rejecting the application.

Joan B. Thompson
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

I am constrained to concur in the affirmation of the decision of the Wyoming State Office. However, this does not signify that I regard the State Office conclusion as necessarily correct.

That decision is premised entirely, as it must be, on the Environmental Analysis Record and Technical Examination Report (EAR) prepared in response to the subject application. The EAR itself is exhaustive in its scope, very comprehensive, and I find it an impressive work in many respects.

Unfortunately, I also find much to criticize. In my opinion its authors, in their genuine concern for their responsibility to identify possible and probable adverse effects on the environment, tended to accentuate the negative disproportionately. Some of the adverse effects anticipated were demonstrably real and immediate. Others were either of very little consequence, or so remote on the scale of probability that they can only be characterized as speculative or conjectural. Up to a point I find no fault in this. A good analysis requires the exercise of sufficient imagination to conceive and evaluate every possible contingency. Moreover, I believe the authors made an honest endeavor to indicate those adverse effects which they regarded as probable and significant and those which either could easily be accepted or which were unlikely to occur. In this endeavor, though, I do not think they were entirely successful. In the catalog of dangers which comprises the bulk of the record it is difficult to distinguish those which are, or should be, or primary concern from those which are inconsequential or unlikely to occur at all. For example, a paragraph on page 71 of the EAR concerns itself with the potential hazards "to man, equipment, pets and wildlife" if a well is drilled for potable water and left uncovered, or if a storage and treatment tank for drinking water should be constructed and left uncovered. I submit that there is a major distinction between exercising a degree of foresight to perceive a hazard and indulging in fantasy.

Moreover, as already stated, my impression is that the negative factors are the subject of most of the authors' attention, while the positive factors, although not entirely neglected, are not given equal emphasis. For example on page 75 the EAR notes that one of the "impacts" anticipated is, "A very small amount in dollar values ($ 160) would be lost (BLM) from reduced grazing privileges (impact to the economy)." No mention is made of the rents and royalties which would be generated by the lease and accrue to the federal, state and local governments, and which reasonably could be anticipated to exceed, thousands of times over, the lost revenue from grazing fees. Thus, a significant positive factor is treated in the report as a negative "impact" of negligible importance.

This lack of balance in the EAR engenders some doubt that the decision premised thereon is the same as would have been reached had the EAR not suffered these infirmities.

Even so, it is not the function of this Board to substitute its judgment for that of the responsible field officials where the difference is only one of personal preference or inclination. As we said in Rosita Trujillo, 21 IBLA 289, 291 (1975):

> Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

The management of the federal lands depends heavily on the authority of the various field officials to make decisions at their own discretion. Accordingly, we have held:

> A decision * * * to reject, in the public interest, an application for a mineral lease is within the discretionary authority of the authorized officer, and in the absence of any showing that the decision constituted an abuse of such discretion, the decision will be sustained.

George S. Miles, Sr., 7 IBLA 372, 37-74 (1972).

In this instance, notwithstanding my criticism of the EAR, I cannot hold that it is so lacking in objectivity as to provide no reasonable basis for the decision. Nothing in the record compels the conclusion that the decision is wrong, or that it was not the product of reasoned, analytical judgment. Moreover, the decision comports with the obligation of this Department to implement the mandate of the National Environmental Policy Act. Therefore, I agree that it should be affirmed.

Edward W. Stuebing
Administrative Judge